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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/743,883	03/26/2001	Jorg Peter Schur	VONKREISLER.	8618

EXAMINER	
YOUNG, MICAH PAUL	

ART UNIT	PAPER NUMBER
1618	

MAIL DATE	DELIVERY MODE
07/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/743,883	Applicant(s) SCHUR, JORG PETER	
	Examiner Micah-Paul Young	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 46,57,58,61 and 63-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 46,57,58,61 and 63-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgement of Papers Received: Amendment/Response dated 4/23/07.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 46,57,58,61,63,64 and 66-70 rejected under 35 U.S.C. 103(a) as being unpatentable over the combine disclosures of Honda (USPN 5,750,563 hereafter '563) in view of Hughes et al (USPN 5,322,689 hereafter '689). The claims are drawn to a composition comprising a polyphenols along with lactic acid.

4. The '563 patent is drawn to a preparation comprising polyphenols, antimicrobial agents and carrier materials (abstract, col. 4, lin. 20-25). The composition comprises at least one gallic acid derivatives such as tannic acid, a flavonoid such as gossypetin and various extracts and essential oils such as camphor (col. 3, lin. 25-col. 4, lin. 26, claim 1). The components of the composition are present in concentrations from 0.1 to 20 % (*Ibid.*). The reference is silent to the inclusion of lactic acid yet suggest the inclusion of humectants. Lactic acid is well known humectant as seen by the '689 patent.

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5. The '689 patent discloses a topical aromatic formulation comprising antibiotics, and carriers (col. 7, lin. 3-68). The carriers include humecatant/moisterizers like lactic acid, extracts such as camphor and eucalyptus oil and phenols such as thymol (examples).
6. Regarding the concentration of the components it is the position of the Examiner that the general conditions of the claims have been met. Applicant is reminded that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *See In re Aller*, 220 F.2d 454 105 USPQ 233, 235 (CCPA 1955).
7. Furthermore the claims differ from the reference by reciting various concentrations of the active ingredient(s). However, the preparation of various compositions having various amounts of the active is within the level of skill of one having ordinary skill in the art at the time of the invention. It has also been held that the mere selection of proportions and ranges is not patentable absent a showing of criticality. *See In re Russell*, 439 F.2d 1228 169 USPQ 426 (CCPA 1971).
8. Regarding claims 63 and 66 it is the position of the Examiner that any composition without an antimicrobial component is susceptible to infection. This would extend to the carrier formulation for the '563 reference. Without the antimicrobial component the carrier composition would be susceptible to infection. It is the position of the Examiner that the '563 reference is inherently a formulation microbially perishable product containing the antimicrobial composition of the invention.
9. With these things in mind it would have been obvious to a skilled artisan to follow the teachings and suggestions of the reference in order to provide an optimized antimicrobial

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formulation. The artisan of ordinary skill would have been motivated to include the humectants of the '689 patent into the formulation of the '563 in order to improve the stability of the formulation. It would have been obvious to one of ordinary skill in the art to follow these suggestions and teachings with an expected result of an antimicrobial formulation useful in treating infections and preserving products.

10. Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combined disclosures of the Honda (USPN 5,750,563 hereafter '563) in view of Carson et al (USPN 5,416,075 hereafter '075). The claims are drawn to a composition comprising polyphenols as extracts.

11. As discussed above the '563 patent discloses an antimicrobial composition comprising polyphenols, and other active agents. The patent suggests the inclusion of extracts of an animal or vegetable origin but is silent to the specific extracts recited by the claims. However tea extracts (*Camellia sinensis*) have long been known for their antimicrobial properties. These properties are discussed in the '075 patents.

12. The '075 patent discloses antimicrobial emulsions comprising extracts and antimicrobial compounds (abstract). The extracts include essential oils including camphor orange oil and anise oil (col. 8, lin. 38-53). A skilled artisan would have been able to follow the suggestions '563 to include vegetable and essential oils, and include the anise oil of '075 in order to add flavor and an aromatic effect.

13. A skilled artisan would have been motivated to include the extracts of the '075 into the formulation of '563 in order to improve the antimicrobial fighting effects and improve the flavor

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and aromatic properties of the composition. These combinations would have been made under the suggestion of '563 to include essential oils and plant/vegetable extracts into the formulation. It would have been obvious to an artisan of ordinary skill to combine these components with an expected result of a topical formulation with improved microbial fighting and aromatic properties.

Response to Arguments

14. Applicant's arguments filed 4/23/07 have been fully considered but they are not persuasive. Applicant argues that:

- a. The combination of the Honda and Hughes references cannot obviate the claimed invention since the Honda reference requires benzyl alcohol and it is expressly restricted from the claimed invention.

15. Regarding this argument, it remains the position of the Examiner that the combination of the Honda and Hughes patents obviates the claims. Regarding the disclosure of benzyl alcohol by Honda, the Examiner disagrees with Applicant on the importance of benzyl alcohol. The reference does not exemplify the use of the compound. Further the compound is listed with more than a dozen other compounds of equal functional equivalents. Benzyl alcohol is not a required feature of the '689 patent. In the 3 examples of the patent camphor is applied as the anesthetic compound in a concentration 5.25 w/w %, well within the limits of the instant claims. The prior art discloses an antimicrobial composition comprising flavonoids, and carriers identical to those of the instant claims. The '563 patent discloses an antimicrobial agents and carriers such as gossypetin and camphor, all within the range of concentrations from 0.1-20 w/w %. The

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reference is silent to the inclusion of lactic acid. The '689 patent discloses antimicrobial formulation comprising camphor, and lactic acid in a concentration from 1-8% (col. 7, lin. 40-50). This combination meets the limitations of the instant claims. For these reasons the claims remain obviated by the combination of the '563 and '689 patents.

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Micah-Paul Young whose telephone number is 571-272-0608. The examiner can normally be reached on M-F 6:00-3:30 every other Monday off.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


MP Young

Micah-Paul Young
Examiner
Art Unit 1618


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER